

### **Remarks**

This is in response to the final Office Action mailed October 17, 2002. Claims 2 and 4 remain pending after entry of this amendment. Claims 1, 3, 8-11, 15, 18-21, 23, 27, 33, and 38-44 were cancelled herein. Claim 4 was amended herein. Applicant submits that the amendments do not raise new issues and respectfully request entry of the above amendment.

### **Objection to the Drawings**

Applicant submits formal drawings along with this response. Withdrawal of this objection is respectfully requested.

### **Claim Objections**

Claims 8, 9, 10, 27, 33 and 44 are objected to for failing to further limit the subject matter of a previous claim. These claims have been cancelled herein. Withdrawal of this objection is respectfully requested.

### **Rejections under 35 U.S.C. §112, second paragraph**

Claims 1, 3, 15, 18, 23, 27, 33, 42, 43 and 44 are rejected as being indefinite. These claims have been cancelled herein. Withdrawal of this rejection is respectfully requested.

### **Rejections under 35 U.S.C. §112, first paragraph**

Claims 1-4, 8-11, 15, 18-21, 23, 27, 33 and 38-44 are rejected as not being enabled by the specification. Independent claim 4 has been amended to delete reference to fragments or variants of SEQ ID No. 1, and to sequences with a certain % homology to SEQ ID NO. 1. Applicants submit that the claims, as amended, are fully enabled and described in the specification. Withdrawal of this rejection is respectfully requested.

### **Rejections under 35 U.S.C. §102(b)**

Claims 1-4, 8-11, 15, 18, 19, 21, 23, 27, 33, 35, 36, 38, 39 and 40 are rejected as being anticipated by Fischer. The Examiner maintains that Fischer teaches vectors containing SEQ ID NO. 1, as well as transgenic tobacco plants containing the vectors. Applicants respectfully

traverse the rejection. As discussed in the prior response, the IPER of the corresponding PCT application stated:

"[Fisher] describes shortened forms of the Vst-1 promoter (Page 90, Table 11) which are fused with the GUS gene. However, these forms do not consist specifically of the selected -430 to -270 range but always contain the region downstream from -280 to the beginning of the promoter sequence of the stilbene synthase gene. It can also not be concluded from [Fisher] that the range between -430 and -270 could be responsible for the regulation of ozone. Thus, also homologous fragments derived therefrom with the same function are allowable (Claim No. 4). The same applies to Claim 15-18 and Claim 23, Procedural Claims 24-33, as well as Usability Claims 34-36, which depend therefrom."

Fischer does not disclose the isolated sequence in the region between -430 and -270 of the stilbene synthase gene Vst1. In view of the amendment to independent claim 4, which now recites an isolated nucleic acid sequence consisting of the sequence of SEQ ID NO. 1, Fischer cannot be seen to anticipate the instant claims. Withdrawal of the rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 103

Claims 20, 41 and 42 are rejected as obvious over Fischer in view of Logemann et al. or Conkling et al. Claims 20, 41, and 42 have been cancelled herein. Withdrawal of this rejection is respectfully requested.


#### Conclusion

In view of the amendments and comments presented herein, favorable reconsideration in the form of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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